IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 212 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHANUPRAKASHDAS GURE HARIPRAKASH

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioner

MR BY MANKAD, APP for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 27/09/2001

ORAL JUDGEMENT

1. Rule. Learned APP Mr. B.Y. Mankad waives service of rule on behalf of respondent No.1 - State of Gujarat.

2. This Revision Application is filed by the present petitioner, who is an accused in Crime Register No. I-57/2001 registered before Gadhada Police Station on 16th April, 2001 under Sections 457, 380 and 114 of the

Indian Penal Code.

3. The short facts which is necessary for this Revision is the present petitioner and other accused named in the complaint were the trustees of Gadhada Gopinathji Dev Mandir Trust. It appears that, according to the scheme approved, there was election and the complainant therein Swami Satyaprakashdasji, according to the contention of the complainant, elected as the trustee and chairman of that trust. The dispute arose for handing over the charge of the trust from the old trustees to the new trustees. It is alleged in the complaint that there were some weapons of the temple and minute books from 24th April, 1989 to 14.12.1997 of the Trust; which were not handed over by the accused to the complainant being new trustees on the change of the management and were stolen by the accused.

4. The present petitioner obtained anticipatory bail from this Court in Criminal Misc. Application No. 3080 of 2001.

5. It is mentioned in the bail order that it would be open for the Investigating Agency to pray for the remand before the competent Magistrate if Investigating Agency considered it proper and just and the Magistrate was directed to decide the prayer on merit. Accordingly, on 15th May, 2001, Investigating Agency filed an Application against the present petitioner for remand of 5 days on following three grounds :

(i) for the seizure of Revolver No. B-80790
(ii) for the seizure of Muzzle Load Pistol, and
(iii) for the minutes book.

6. Learned Judge vide his order dated 15th May, 2001, allowed the application and directed to remand the custody of the present petitioner to the Police for two days upto 16th of May, 2001 and the said order is challenged in this Revision Application.

7. Learned Advocate Harin P. Raval for the petitioner and learned APP Mr. B.Y. Mankad for the respondent - State of Gujarat were heard.

8. Though learned APP Mr. Mankad has objected the Revision strongly on the ground that when the investigation is in progress for the seizure of muddamal, the custody of the accused on remand would be absolutely necessary. However, on perusing the papers and considering the attending circumstances of the matter, the core question which arises is whether granting of remand of the present petitioner is justified on the grounds mentioned in the remand application. It has come on the record that so far as the Revolver No. B-80790 is concerned, this is the weapon duly licensed, of which the petitioner is the lawful retainer. The question of remand for this would not arise on facts. So far as the seizure of muddamal Muzzle Load Pistol is concerned, it

has come on record that the complainant who took over as Trustee on 19th June, 1998 and thereafter the complainant applied to the District Magistrate for destroying the weapon Muzzle Load Pistol mentioned in the remand application. Therefore, there is no justification on the ground that the Muzzle Load Pistol is in the possession of the accused and the same is required to be seized because the same was in the custody of complainant because the complainant applied to the District Magistrate for destroying of the said muddamal pistol. So far as the minute books are concerned, according to the scheme framed under the Bombay Public Trust Act, the custody of the minute books remains with the Chairman and admittedly the present petitioner - accused was not the Chairman. Not only that, but the complainant also issued the Notice against the then Chairman Govindbhai Dharamshibhai to hand over the minute books and, therefore, to remand on the ground that the minute books were in the possession of the present petitioner and was required to be seized was not justified.

9. In the above view of the matter, the Revision is required to be allowed and the order impugned passed by learned Judicial Magistrate, First Class, Gadhada, on 15th of May, 2001, allowing the remand application of the Investigating Officer is set aside. However, the observation made herein pertains to the stage of the remand only, which may not come in the way of the prosecution.

10. In the result, this Revision Application is allowed. Order impugned granting remand of the accused to the Police Custody is set aside. Rule is made

absolute.

(J.R. Vora, J.)

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